

Court of Appeals, State of Michigan

ORDER

Mary Lou Rodriguez v John Rodriguez

Docket No. 259558

LC No. 96-640495-DM

Michael J. Talbot
Presiding Judge

Kirsten Frank Kelly

Karen M. Fort Hood
Judges

The Court orders, pursuant to MCR 7.205(D)(2), that the trial court's November 18, 2004 order is VACATED. Modification of a child support order is a matter within the trial court's discretion, and, therefore, this Court reviews the trial court's decision for an abuse of discretion. *Paulson v Paulson*, 254 Mich App 568, 571; 657 NW2d 559 (2002). In this case, the trial court denied defendant's motion for reduction in child support payments on the basis that he voluntarily reduced his income. However, this fact alone is insufficient to support a denial of defendant's motion. In allowing income imputation to a payer whom the court finds to have an unexercised ability to pay, several factors must be considered, and specific findings must be made. *Ghidotti v Barber*, 459 Mich 189, 198-199; 586 NW2d 883 (1998) (citing factors set forth in *Sword v Sword*, 399 Mich 367; 249 NW2d 88 (1976) and the Michigan Child Support Formula Manual). Even assuming defendant voluntarily reduced his income, without a consideration of all the relevant factors, a determination that defendant has "an actual ability and likelihood of earning the imputed income" is "pure speculation." *Ghidotti, supra* at 199. The trial court's analysis was incomplete, and therefore its decision amounts to an abuse of discretion.

This matter is REMANDED to the trial court for further proceedings consistent with this order. The trial court shall, among other things, consider defendant's motion in light of the imputation of income factors set forth in *Ghidotti*, *Sword*, and the manual. We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY 13 2005

Date

Sandra Schultz Mengel
Chief Clerk